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HOUSE BILL 08-1207

BY REPRESENTATIVE(S) Kefalas, Borodkin, Carroll M., Carroll T., Fischer, Frangas, Hodge, Kerr A., Levy, Madden, McFadyen, Merrifield, Middleton, Pommer, Primavera, Stafford, Todd, Green, Labuda, and Summers;

also SENATOR(S) Bacon, Groff, Shaffer, Tupa, and Windels.

CONCERNING A PURCHASING PREFERENCE FOR ENVIRONMENTALLY PREFERABLE PRODUCTS.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. 24-103-207.5, Colorado Revised Statutes, is amended to read:

24-103-207.5. Purchasing preference for environmentally preferable products - definitions. (1) As used in this section, unless the context otherwise requires, "environmentally preferable products" means products ~~or services~~ that have a lesser or reduced adverse effect on human health and the environment when compared with competing products ~~or services~~ that serve the same purpose. The product ~~or service~~ comparison may consider such factors as the availability of any raw materials used in the product ~~or service~~ being purchased and the availability, use, production, safe operation, maintenance, packaging, distribution, disposal, or

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

recyclability of the product ~~or service~~ being purchased.

(2) ALL INVITATIONS FOR BIDS FOR PRODUCTS SHALL INCLUDE LANGUAGE THAT DESCRIBES THE AVAILABILITY OF THE PURCHASING PREFERENCE FOR ENVIRONMENTAL PRODUCTS. In connection with the purchase of products, ~~or services~~, a governmental body shall award the contract to a bidder who offers environmentally preferable products subject to the conditions specified in subsection (3) of this section UNLESS THE SPECIFICATIONS USED IN THE SOLICITATION CONTAIN ENVIRONMENTALLY PREFERABLE PRODUCT CRITERIA. THIS PREFERENCE DOES NOT APPLY TO THE PURCHASE OF SERVICES, INCLUDING CONSTRUCTION SERVICES.

(3) The preference specified in subsection (2) of this section shall apply only if all of the following conditions are met AND SELECTING AN ENVIRONMENTALLY PREFERABLE PRODUCT WOULD NOT OTHERWISE BE DISADVANTAGEOUS TO THE STATE UPON CONSIDERATION OF THESE CONDITIONS, SINGLY OR IN COMBINATION:

(a) The quality of the environmentally preferable products meets the specification of the bid.

(b) The environmentally preferable products are suitable for the use required by the purchasing entity.

(c) Any bidder able to offer environmentally preferable products is able to supply such products in sufficient quantity, as indicated in the invitation for bids.

(d) The bid ~~or quoted~~ price for environmentally preferable products does not exceed the lowest bid ~~or quoted~~ price for products that are not environmentally preferable by more than five percent.

(e) The head of the governmental body or other official charged by law with the duty to purchase products has made a determination that the governmental body is able to purchase the environmentally preferable products out of the governmental body's existing budget without any further supplemental or additional appropriation.

(f) ~~Selecting an environmentally preferable product would not be otherwise disadvantageous to the state upon consideration of any one or~~

~~more of the factors specified in paragraphs (a) to (e) of this subsection (3); singly or in combination.~~

(4) If the bid ~~or quoted~~ price for environmentally preferable products exceeds the bid ~~or quoted~~ price for products that are not environmentally preferable by more than five percent, a governmental body may award the contract to a bidder who offers environmentally preferable products where the governmental body demonstrates, on the basis of ~~a cost~~ ASSESSMENTS SUCH AS THE COSTS of ownership AND A life-cycle analysis, that long-term savings to the state will result from environmentally preferable purchasing in accordance with the requirements of this section. Nothing in this section shall require that a governmental body perform a ~~cost~~ AN ANALYSIS OF THE COSTS of ownership OR A life-cycle analysis in connection with the purchase of any products.

(5) (a) Any bidder that seeks to qualify for the preference created by subsection (2) of this section shall provide documentation to the governmental body inviting the bid that the products offered by the bidder are environmentally preferable. This requirement may be satisfied by submission of any of the following:

(I) A ~~cost of ownership~~ life-cycle analysis conducted on the applicable product ~~or service~~ that has been conducted in accordance with applicable standards as determined by the purchasing governmental body or by the international organization for standardization or any successor organization;

(II) A reference to an existing environmentally preferable product list maintained by a state or the federal government that contains the product; ~~or service~~; or

(III) A reference to a nationally recognized third-party certification entity that has certified the product ~~or service~~ as environmentally preferable on the basis of a valid ~~cost of ownership~~ life-cycle analysis. THE GOVERNOR'S ENERGY OFFICE OR SUCCESSOR OFFICE SHALL MAINTAIN A LIST OF CERTIFICATION ENTITIES.

(b) The governmental body may rely in good faith on any form of documentation that satisfies the requirement of paragraph (a) of this subsection (5).

(c) Notwithstanding any other provision of this section, if none of the forms of documentation specified in paragraph (a) of this subsection (5) apply to the product ~~or service~~ being purchased, the requirements of this section shall not apply to the purchase of the product. ~~or service.~~

(6) A governmental body shall report to the joint budget committee of the general assembly the results of any ~~cost~~ ANALYSIS OF THE COSTS of ownership AND life-cycle analysis used to justify the purchase of any environmentally preferable products in accordance with the requirements of subsection (4) of this section during the previous fiscal year.

(7) In connection with any cost of ownership ANALYSIS OR life-cycle analysis undertaken in connection with any purchase under this section of a product ~~or service~~ that involves the replacement of existing electrical, natural gas, or steam service, the cost analysis shall consider any stranded utility costs.

SECTION 2. Effective date. This act shall take effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly that is allowed for submitting a referendum petition pursuant to article V, section 1 (3) of the state constitution, (August 6, 2008, if adjournment sine die is on May 7, 2008); except that, if a referendum petition is filed against this act or an item, section, or part of this act within such period, then the act, item, section, or

part, if approved by the people, shall take effect on the date of the official declaration of the vote thereon by proclamation of the governor.

Andrew Romanoff
SPEAKER OF THE HOUSE
OF REPRESENTATIVES

Peter C. Groff
PRESIDENT OF
THE SENATE

Marilyn Eddins
CHIEF CLERK OF THE HOUSE
OF REPRESENTATIVES

Karen Goldman
SECRETARY OF
THE SENATE

APPROVED _____

Bill Ritter, Jr.
GOVERNOR OF THE STATE OF COLORADO